HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 439 of 2005 (SS)

Isham Singh s/o Sri Swanath Singh
R/o village Razinagar, District Moradabad ..... Petitioner

Versus

1. State of Uttaranchal
2. Joint Director of Education, Nainital.
3. District Education Officer, Udham Singh Nagar
4. Basic Shiksha Adhikari, Udham Singh Nagar ..... Respondents

Sri S.S. Yadav, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 10.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondents to give appointment to the petitioner under U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules.

Briefly stated the father of the petitioner namely Sri Shivnath Singh was working as Head Master in the Primary Vidyalaya Gangapur Chait Jaspur, District Udham Singh Nagar died in harness on 23rd January 1999. At the time of death of his father the petitioner was minor, so he could not file application for compassionate appointment. His mother has given application that when his son will attain the age of majority, appointment on compassionate ground may be given to him. The petitioner attained the age of majority on 11.8.2004

but the respondents refused to give appointment to the petitioner. Petitioner filed a writ petition No. 1624 of 2004 (SS), Isham Singh vs. Joint Director Education, Nainital & others. The writ petition was disposed of with the direction that respondents will take decision on the representation of the petitioner. Respondent no. 2 rejected the representation vide order dated 30.3.2005 on the ground that application for appointment on compassionate ground was made after the statutory period of five years.

The counsel for the petitioner has submitted that G.O. No. 225/karmic-2/2002 dated 8.6.2002, by which direction was issued not to send belated applications for appointment compassionate ground for condonation of delay to the Directorate was cancelled vide notification dated 1495/karmic Vibhag/2002 on 31.8.2002 so the Government order dated 8.6.2002 mentioned in the impugned order, does not come to operate in the present case.

It may be pointed out that the father of the petitioner died on 23.1.1999 and cause of action accrued to the petitioner after the death of his father. The privilege was available to the petitioner on the date when his father died. As such the U.P. Recruitment of Dependents of Government Servants Dying in Harness Ruses 1974, is applicable in the case of the petitioner. Rule 5 of the said Rules provides the entitlement of the petitioner to get the employment. Rule 5 of the said Rules is quoted below:

5. Recruitment of a member of the family of the deceased-*(1) In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under*

the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

(i) fulfils the educational qualifications prescribed for the post.

(ii) is otherwise qualified for Government service, and

(iii) makes the application for employment within five years from the date of the death of the Government servant.

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement, as it may consider necessary for dealing with the case in a just and equitable manner.

proviso to Rule 5 above gives ample power to the State Government to extend the time limit of five years for filing application. In the present case at the time of death of his father the petitioner was minor. His mother preferred the application to the Department that her case for compassionate appointment be considered when her son will attain the age of majority.

The scheme of compassionate appointment itself renders that the appointment may be made after five years if the State Government is satisfied that such time limit would cause undue hardship to the petitioner.

Thus it appears a fit case where relaxation in time period for filing application for employment under compassionate ground may be given.

In view of above, a writ of certiorari is issued quashing the order dated 30.3.2005. The respondents are directed to consider the case of the petitioner for compassionate appointment. Liberty is given to the petitioner to file a fresh representation within two weeks after the receipt of the certified copy of this order, which shall be decided by the respondents within one month thereafter.

Accordingly, the writ petition is Allowed. No order as to costs.

Dated: 10.3.2006 **Rajesh Tandon J.**

*Dhyani